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4 IN RE: SOCIAL MEDIA ADOLESCENT
5 ADDICTION/PERSONAL INJURY
6 PRODUCTS LIABILITY LITIGATION
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15 Case No. [22-md-03047-YGR](#) (PHK)

16 **ORDER RESOLVING DISPUTE RE**
17 **META'S SUBPOENAS SERVED ON**
18 **NONPARTY FRANCES HAUGEN**

19 Re: Dkt. 2061
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INTRODUCTION

This MDL has been referred to the undersigned for discovery. *See* Dkt. 426. Now pending before the Court is a joint letter brief regarding a dispute between Meta and nonparty Frances Haugen concerning document and deposition subpoenas Meta served on Haugen. [Dkt. 2061]. On July 16, 2025, the Parties lodged a copy of the document requests in the subject document subpoena, annotated to reflect the Parties' meet and confers (attached hereto). *See* Appendix. The Court heard oral argument from the Parties as to Haugen's objections to both subpoenas on July 17, 2025. *See* Dkt. 2117. Pursuant to the Court's direction at that hearing, the Parties filed supplemental briefs on the First Amendment issues (and Haugen filed a supplemental declaration). [Dkts. 2135, 2136, 2149]. Upon careful review of the briefing, submissions, records of this action, and arguments of counsel, the Court resolves the disputes as to the Haugen subpoenas as set forth herein.

LEGAL STANDARDS

The Court has broad discretion and authority to manage discovery. *U.S. Fidelity & Guar. Co. v. Lee Inv. LLC*, 641 F.3d 1126, 1136 n.10 (9th Cir. 2011) (“District courts have wide latitude in controlling discovery, and their rulings will not be overturned in the absence of a clear abuse of discretion.”); *Laub v. U.S. Dep’t of Int.*, 342 F.3d 1080, 1093 (9th Cir. 2003). The Court’s discretion extends to crafting discovery orders that may expand, limit, or differ from the relief requested. See *Crawford-El v. Britton*, 523 U.S. 574, 598 (1998) (holding trial courts have “broad discretion to tailor discovery narrowly and to dictate the sequence of discovery”). For example, the Court may limit the scope of any discovery method if it determines that “the discovery sought is unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive.” Fed. R. Civ. P. 26(b)(2)(C)(i).

Federal Rule of Civil Procedure 45 permits a party to serve a subpoena on a nonparty requiring, among other things, the production of “documents, electronically stored information, or tangible things in that person's possession, custody, or control.” Fed. R. Civ. P. 41(a)(1)(A)(iii). The scope of discovery allowed under a Rule 45 subpoena is generally the same as the scope of discovery permitted under Rule 26(b). *In re Subpoena to Apple, Inc.*, No. 5:14-cv-80139-LHK, PSG, 2014 WL 2798863, at *2 (N.D. Cal. June 19, 2014); see Fed. R. Civ. P. 45 advisory committee's note to 1970 amendment (“[T]he scope of discovery through a subpoena is the same as that applicable to Rule 34 and the other discovery rules.”); Fed. R. Civ. P. 34(a) (“A party may serve on any other party a request within the scope of Rule 26(b).”).

In this MDL, the Court has repeatedly stated the relevant legal standards. Rule 26(b)(1) delineates the scope of discovery in federal civil actions and provides that “[p]arties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case.” Information need not be admissible to be discoverable. *Id.* Relevancy for purposes of discovery is broadly defined to encompass “any matter that bears on, or that reasonably could lead to other matter that could bear on, any issue that is or may be in the case.” *In re Williams-Sonoma, Inc.*, 947 F.3d 535, 539 (9th Cir. 2020) (quoting *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 350-51 (1978)); see also *In re Facebook, Inc. Consumer*

1 *Privacy User Profile Litig.*, No. 18-MD-2843 VC (JSC), 2021 WL 10282215, at *4 (N.D. Cal.
2 Sept. 29, 2021) (“Courts generally recognize that relevancy for purposes of discovery is broader
3 than relevancy for purposes of trial.”) (alteration omitted).

4 While the scope of relevance is broad, discovery is not unlimited. *ATS Prods., Inc. v.*
5 *Champion Fiberglass, Inc.*, 309 F.R.D. 527, 531 (N.D. Cal. 2015) (“Relevancy, for the purposes
6 of discovery, is defined broadly, although it is not without ultimate and necessary boundaries.”).
7 Information, even if relevant, must be “proportional to the needs of the case” to fall within the
8 scope of permissible discovery. Fed. R. Civ. P. 26(b)(1). The 2015 amendments to Rule 26(b)(1)
9 emphasize the need to impose reasonable limits on discovery through increased reliance on the
10 commonsense concept of proportionality: “The objective is to guard against redundant or
11 disproportionate discovery by giving the court authority to reduce the amount of discovery that
12 may be directed to matters that are otherwise proper subjects of inquiry. The [proportionality
13 requirement] is intended to encourage judges to be more aggressive in identifying and
14 discouraging discovery overuse.” In evaluating the proportionality of a discovery request, the
15 Court considers “the importance of the issues at stake in the action, the amount in controversy, the
16 parties' relative access to the information, the parties' resources, the importance of the discovery in
17 resolving the issues, and whether the burden or expense of the proposed discovery outweighs its
18 likely benefit.” Fed. R. Civ. P. 26(b)(1).

19 The party seeking discovery bears the burden of establishing that its request satisfies the
20 relevancy requirements under Rule 26(b)(1). *La. Pac. Corp. v. Money Mkt. I Inst. Inv. Dealer*,
21 285 F.R.D. 481, 485 (N.D. Cal. 2012). The resisting party, in turn, has the burden to show that the
22 discovery should not be allowed. *Id.* The resisting party must specifically explain the reasons
23 why the request at issue is objectionable and may not rely on boilerplate, conclusory, or
24 speculative arguments. *Id.*; see also *Blankenship v. Hearst Corp.*, 519 F.2d 418, 429 (9th Cir.
25 1975) (“Under the liberal discovery principles of the Federal Rules defendants were required to
26 carry a heavy burden of showing why discovery was denied.”).

27 With regard to proportionality, “[t]he parties and the court have a collective responsibility
28 to consider the proportionality of all discovery and consider it in resolving discovery disputes.”

1 Fed. R. Civ. P. 26 advisory committee's note to 2015 amendment. "A party claiming undue
2 burden or expense ordinarily has far better information—perhaps the only information—with
3 respect to that part of the determination. A party claiming that a request is important to resolve the
4 issues should be able to explain the ways in which the underlying information bears on the issues
5 as that party understands them. The court's responsibility, using all the information provided by
6 the parties, is to consider these and all the other factors in reaching a case-specific determination
7 of the appropriate scope of discovery." *Id.*

8 As part of its inherent discretion and authority, the Court has broad discretion in
9 determining relevancy for discovery purposes. *Surfivor Media, Inc. v. Survivor Prods.*, 406 F.3d
10 625, 635 (9th Cir. 2005) (citing *Hallett v. Morgan*, 296 F.3d 732, 751 (9th Cir. 2002)). Similarly,
11 the Court's determination as to the proportionality of discovery lies within its discretion. *See*
12 *Jones v. Riot Hosp. Grp. LLC*, 95 F.4th 730, 737-38 (9th Cir. 2024) (finding district court did not
13 abuse discretion on proportionality ruling). Ultimately, "the timing, sequencing and
14 proportionality of discovery is left to the discretion of the Court." *Toro v. Centene Corp.*, No. 19-
15 cv-05163 LHK (NC), 2020 WL 6108643, at *1 (N.D. Cal. Oct. 14, 2020).

16 As part of its inherent discretion and authority, the Court has discretion in resolving
17 disputes over whether to grant a motion to compel compliance with or to quash a Rule 45
18 subpoena. *See Garrett v. City & Cnty. of S.F.*, 818 F.2d 1515, 1519 (9th Cir. 1987). Further, Rule
19 45 expressly states that "[a] party or attorney responsible for issuing and serving a subpoena must
20 take reasonable steps to avoid imposing undue burden or expense on a person subject to the
21 subpoena. The court for the district where compliance is required must enforce this duty[.]" Fed.
22 R. Civ. P. 45(d)(1); *see also* Rule 45(d)(3)(A)(iv) ("On timely motion, the court for the district
23 where compliance is required *must* quash or modify a subpoena that . . . (iii) requires disclosure of
24 privileged or other protected matter, if no exception or waiver applies; or (iv) subjects a person to
25 undue burden.") (emphasis added).

26 A nonparty commanded to produce documents pursuant to a Rule 45 subpoena may
27 challenge the subpoena in one of three ways: (1) by written objection; (2) by moving to quash or
28 modify the subpoena; or (3) by moving for a protective order. *See* Fed. R. Civ. P. 26(c); Fed. R.

1 Civ. P. 45(d)(2)(B), (d)(3). If a nonparty responds to a Rule 45 subpoena with objections, the
2 party who served the subpoena may move for an order compelling compliance. Fed. R. Civ. P.
3 45(d)(2)(B)(i). Written objections to a Rule 45 subpoena must be served “before the earlier of the
4 time specified for compliance or 14 days after the subpoena is served.” Fed. R. Civ. P.
5 45(d)(2)(B). Failure to timely and properly object to the subpoena generally constitutes a waiver
6 of all grounds for objection, including privilege. *Richmark Corp. v. Timber Falling Consultants*,
7 959 F.2d 1468, 1473 (9th Cir. 1992) (“It is well established that a failure to object to discovery
8 requests within the time required constitutes a waiver of any objection.”).

9 The party seeking to compel compliance with a subpoena bears the burden of establishing
10 that its request seeks relevant information and thus falls within the appropriate scope of discovery.
11 *iSabre GLBL, Inc. v. Kimpton Hotel & Rest. Grp., LLC*, No. 21-mc-80053-MMC (JSC), 2021 WL
12 1839689, at *2 (N.D. Cal. May 6, 2021) (“[T]he party issuing the subpoena must demonstrate that
13 the information sought is relevant and material to the allegations and claims at issue in the
14 proceedings.”). The objecting party, in turn, has the burden of persuasion to show that the
15 discovery should not be allowed. *Id.* (“Generally, the party moving to quash under Rule 45(d)(3)
16 bears the burden of persuasion[.]”). Accordingly, “a court determining the propriety of a
17 subpoena balances the relevance of the discovery sought, the requesting party's need, and the
18 potential hardship to the party subject to the subpoena.” *ATS Prods., Inc. v. Champion Fiberglass,*
19 *Inc.*, 309 F.R.D. 527, 531 (N.D. Cal. 2015) (quoting *Gonzales v. Google, Inc.*, 234 F.R.D. 674,
20 680 (N.D. Cal. 2006)).

21 The Court may limit discovery “to protect a party or person from annoyance,
22 embarrassment, oppression, or undue burden or expense.” Fed. R. Civ. P. 26(c). Discovery
23 restrictions may be even broader where the target is a nonparty. *Dart Indus. Co. v. Westwood*
24 *Chem. Co.*, 649 F.2d 646, 649 (9th Cir. 1980) (“While discovery is a valuable right and should not
25 be unnecessarily restricted, the ‘necessary’ restriction may be broader when a nonparty is the
26 target of discovery. . . . [T]here appear to be quite strong considerations indicating that discovery
27 would be more limited to protect third parties from harassment, inconvenience, or disclosure of
28 confidential documents.”) (cleaned up). “In determining whether a subpoena poses an undue

1 burden, courts weigh the burden to the subpoenaed party against the value of the information to
2 the serving party. Generally, this requires consideration of relevance, the need of the party for the
3 documents, the breadth of the document request, the time period covered by it, the particularity
4 with which the documents are described and the burden imposed.” *Jacoby v. Bd. of Supervisors of*
5 *La. Sys.*, 709 F. Supp. 3d 1087, 1089 (E.D. Cal. 2023). In evaluating the undue burden issue, a
6 court may quash a subpoena’s request for documents where the party seeking the discovery “can
7 more easily and inexpensively obtain the documents from [the opposing party], rather than from
8 [the] nonparty [served with the subpoena].” *Moon v. SCP Pool Corp.*, 232 F.R.D. 633, 638 (C.D.
9 Cal. 2005).

DISCUSSION

I. SUBPOENA FOR DOCUMENTS FROM HAUGEN

12 The Parties’ fundamental dispute concerns whether Haugen should be required to produce
13 documents and communications with current and former Meta employees (both identified and
14 unidentified) regarding social media platforms and the health of minors. As the Parties’ briefing
15 and the public record discloses, Haugen is a former Meta employee who has spoken out publicly
16 and testified in governmental hearings regarding her views about Meta and youth health issues.

17 See, e.g., *Statement of Frances Haugen*, available at

18 <https://www.commerce.senate.gov/services/files/FC8A558E-824E-4914-BEDB-3A7B1190BD49>
19 (last visited Aug. 11, 2025). Haugen also authored a book published in 2023 which discusses her
20 experience working at and her views on Facebook. FRANCES HAUGEN, THE POWER OF ONE: HOW
21 I FOUND THE STRENGTH TO TELL THE TRUTH AND WHY I BLEW THE WHISTLE ON FACEBOOK,
22 (Little, Brown & Co. 2023).

23 Of the twenty-three document requests in the subpoena, Request Nos. 1-3 and 6-19 remain
24 disputed and are the subject of this Order. As noted in the Appendix, Request Nos. 20 and 21
25 were withdrawn by Meta. The disputes as to Request Nos. 4-5 and 22-23 were resolved either
26 prior to or at the hearing on this dispute. As of the date of the opening letter brief, Haugen had
27 produced documents in response to Request Nos. 5, 22, and 23. [Dkt. 2061 at 5]. Further, in
28 briefing on this dispute, Haugen has agreed to produce nonprivileged emails responsive to Request

1 Nos. 6 and 7. [Dkt. 2136 at 3]. Thus, the Court will not quash Request Nos. 6 and 7 to that
2 extent.

3 **a. First Amendment Associational Rights**

4 Haugen objects to most of the document requests in the Meta subpoena on the grounds that
5 the requests infringe her First Amendment rights and privileges. [Dkt. 2061 at 4-5]. Haugen
6 argues that these requests, if enforced, “would chill and infringe upon her free exercise of speech,
7 association, and her right to petition the government.” *Id.* at 4. Haugen’s objections extend to
8 Request Nos. 1-3, 6-10, 12-14, 16-17, and 19. *Id.* at 4-5. Meta argues that “Ms. Haugen cannot
9 shield the communications requested on [First Amendment] grounds, as they are between Ms.
10 Haugen and other third parties, not members of an association expressing shared views.” *Id.* at 8.

11 The undersigned has previously upheld First Amendment objections by other nonparties in
12 response to similar subpoenas issued to them by Meta in this MDL. See Dkt. 1963. Familiarity
13 with that previous Order’s discussion of First Amendment associational rights and legal doctrine is
14 assumed. The Parties dispute whether the analysis in that previous Order is correct, and the Court
15 provided an opportunity for the Parties to submit supplemental briefing on the First Amendment
16 issues, focusing primarily on the applicability of the journalist’s privilege, the right to petition the
17 government, and the sufficiency of proof regarding the asserted chilling effect. [Dkt. 2135; Dkt.
18 2136; Dkt. 2149].

19 The “First Amendment protects political association as well as political expression, and the
20 freedom to associate with others for the common advancement of political beliefs and ideas is . . .
21 protected by the First and Fourteenth Amendments.” *Perry v. Schwarzenegger*, 591 F.3d 1126,
22 1139 (9th Cir. 2010) (cleaned up). “[T]he government must justify its actions not only when it
23 imposes direct limitations on associational rights, but also when governmental action would have
24 the practical effect ‘of discouraging’ the exercise of constitutionally protected political rights.
25 Such actions have a chilling effect on, and therefore infringe, the exercise of fundamental rights.
26 Accordingly, they ‘must survive exacting scrutiny.’” *Id.* (cleaned up). “Disclosures of political
27 affiliations and activities that have a ‘deterrent effect on the exercise of First Amendment rights’
28 are therefore subject to this same ‘exactng scrutiny.’ A party who objects to a discovery request

1 as an infringement of the party's First Amendment rights is in essence asserting a First
2 Amendment *privilege.*" *Id.* at 1139-40 (cleaned up).

3 In *Chevron Corp. v. Donziger*, No. 13-mc-80038 CRB (NC), 2013 WL 1402727 (N.D.
4 Cal. Apr. 5, 2013), Judge Cousins explained the Ninth Circuit's legal standard for First
5 Amendment protections with regard to freedom of expression and associational rights as follows:

6 *Perry v. Schwarzenegger*, 591 F.3d 1126, 1139-41 (9th Cir. 2009)...
7 sets forth a two-part test for analyzing claims of first amendment
8 privilege in a discovery dispute. First, the party asserting the privilege
9 must make "a *prima facie* showing of arguable first amendment
10 infringement." "This *prima facie* showing requires [a party] to
11 demonstrate that enforcement of the discovery requests will result in
12 (1) harassment, membership withdrawal, or discouragement of new
13 members, or (2) other consequences which objectively suggest an
14 impact on, or chilling of, the members' associational rights." A *prima
facie* showing "turns not on the type of information sought, but on
whether disclosure of the information will have a deterrent effect on
the exercise of protected activities."

15 *Id.* at *2 (internal citations omitted).

16 Haugen objects to disclosure of privileged communications with current and former Meta
17 employees, with staff and agents of her nonprofit organization, "Beyond the Screen," with other
18 nonprofits, with advocacy groups, and with social critics which "advocate about Meta's risks for
19 minors." [Dkt. 2136 at 3 (objecting to Request Nos. 1-3, 8-14, 17 and 19)]. Haugen states in her
20 declaration that, if the Court were to compel disclosure of the documents sought:
21

22 I will be afraid that my personal, non-public communications with
23 others about these topics will be the target of a subpoena and I will be
24 compelled to disclose them. Others have told me that they will have
25 the same fear communicating with me and that it will chill what they
26 are willing to share. That fear will greatly impact what I write, with
27 whom I feel I can freely speak, and with whom I associate. I would
not write as often or as critically of social media companies; I would
also be forced to be more cautious about communicating with others
on these topics and would curtail whether I associate at all with other
social critics, academics, nonprofits, state agencies, and others to
discuss issues related to the social media industry; and, if so, how I
communicate with them and how frequently I communicate with
them (or not).

28 [Dkt. 2136-1 at ¶ 8]. Haugen's counsel argues that the document subpoena is part of a
"campaign" by Meta retaliating against whistleblowers. [Dkt. 2061 at 4, 8].

Meta argues that the Haugen declaration is insufficient to demonstrate a basis for her First

1 Amendment objections. [Dkt. 2149]. Relying on a pre-*Perry* Ninth Circuit decision, Meta argues
2 that Haugen's declaration fails to present "objective and articulable facts" which go "beyond
3 broad allegations or subjective fears." *Id.* (citing *Dole v. Local Union* 375, 921 F.2d 969, 972 (9th
4 Cir. 1990)). A careful analysis of *Dole* does not support Meta's argument. In *Dole*, the Ninth
5 Circuit reiterated an earlier ruling (prior to remand) in that same case in which the objecting party
6 was required "to demonstrate that enforcement of the subpoenas will result in (1) harassment,
7 membership withdrawal, or discouragement of new members, or (2) other consequences which
8 objectively suggest an impact on, or 'chilling' of the members' associational rights." 921 F.2d at
9 972 (quoting *Brock v. Local 375, Plumbers Int'l Union of Am.*, 860 F.2d 346, 350 (9th Cir. 1988))).
10 The Ninth Circuit made clear that *Brock*'s *prima facie* test had two tiers. "First, the [objecting
11 party] must demonstrate a causal link between the disclosure and the prospective harm to
12 associational rights. Second, the [objecting party] must demonstrate that it is the type of
13 association where exposure could incite threats, harassment, acts of retribution, or other adverse
14 consequences that could reasonably dissuade persons from affiliating with it." *Id.*

15 Significantly, the declaration at issue in *Dole* failed on the first part of the test: a failure to
16 show a causal nexus. *Id.* at 272-73. The declaration submitted in *Dole* averred that the decline in
17 voluntary contributions to the labor union fund was caused by publicity regarding the
18 government's investigation into the union, rather than the threat of subpoena enforcement *per se*.
19 "To the extent there has been a 'chill' in affiliations with the [objecting party], the affidavit
20 provides the court no assistance in allocating the responsibility for that chill between the general
21 investigation (the propriety of which the parties do not contest here) and the particular threat of
22 disclosure of contributors' names through the subpoenas." *Id.* at 272. That is, the declaration in
23 *Dole* failed to provide any facts of a causal nexus between the subpoena's potential enforcement
24 and the First Amendment rights at issue. It was in this context that the Ninth Circuit stated, "the
25 courts generally have demanded the presentation of 'objective and articulable facts, which go
26 beyond broad allegations or subjective fears.'" *Id.*

27 By contrast, the Haugen declaration and the record as a whole demonstrate "objective and
28 articulable facts" regarding the causal link between the disclosure sought and the prospective harm

1 to associational rights. Haugen attests that compelled disclosure of her personal, nonpublic
2 communications with others about Meta and social media platforms will impact what she writes,
3 with whom she can freely speak and associate, and the frequency of her writing critically of social
4 media companies. [Dkt. 2136-1 at ¶¶ 8, 10, 13]. Haugen further avers that other people have told
5 her that compelled disclosure will chill what those persons are willing to share with her. *Id.* at
6 ¶¶ 8, 11-12. Haugen states that compelled disclosure will cause this chilling of First Amendment
7 associational rights because nonprofits and individuals with whom she has communicated have
8 “extremely small budgets and cannot take the financial risk of being drawn into litigation by Meta
9 or similar companies.” *Id.* at ¶ 12. Haugen avers as to her belief that “disclosing my confidential
10 communications with others could equally place them at risk of retaliation by Meta, a powerful
11 company with significant resources.” *Id.* at ¶ 14.

12 In briefing, Haugen’s counsel has similarly argued that the Court’s analysis and conclusion
13 in its previous ruling on the First Amendment objections to other similar Meta subpoenas is
14 equally applicable here. *See* Dkt. 1963 at 8 (objecting parties argued “that requiring the disclosure
15 of these communications will have a chilling effect on the associational rights of the current and
16 former Meta employees, because the current and former Meta employees, if identified, would fear
17 adverse employment actions and/or the risk of being ‘blackballed’ in the industry” and “that
18 discovery of the communications poses unjustifiable risks which ultimately chill the associational
19 rights [the objecting parties] and the Meta employees (current and former) enjoy”).

20 Meta repeats an argument asserted earlier in this litigation that Haugen and the persons she
21 communicated with are not part of any formal “expressive association” or organized group, and
22 thus, do not have the claimed associational rights under the First Amendment. [Dkt. 2061 at 8]; *cf.*
23 Dkt. 1764 at 4 (Meta arguing for enforcement of subpoena against nonparty Jayakumar:
24 “Jayakumar does not purport to be in a political organization relevant to the subpoena”); Dkt. 1765
25 at 3 (Meta arguing for enforcement of subpoena against nonparty Bejar: “Bejar is not involved
26 with an political association relevant to the subpoenas”). The Court previously rejected Meta’s
27 argument on this point.

28 While organizations or entities might have standing to assert associational rights, those

1 rights flow from the members. *Brock*, 860 F.2d at 349. In *Brock*, the Ninth Circuit stressed that
2 an emphasis on the organization as an entity is incorrect:

3 The district court's emphasis on organizational structure is misplaced.
4 It does not matter whether the Fund is totally independent from the
5 Union, as appellants claim, or merely a bank account of the Union, as
6 the district court found. If the Fund is sufficiently independent of the
7 Union to be considered in its own right, it can attempt to show
infringement of its members' first amendment rights. If the Fund is
merely an extension of the Union, then the Union can make the
attempt. Associational rights are implicated either way.

8 *Id.* (emphasis added). In *Brock*, the Ninth Circuit made clear that the members (who are
9 individuals) have the First Amendment associational rights—and the organizations involved have
10 standing to assert those associational rights on behalf of the members.

11 Furthermore, in *Perry*, the Ninth Circuit recognized that “[t]he freedom to associate with
12 others for the common advancement of political beliefs and ideas lies at the heart of the First
13 Amendment.” 591 F.3d at 1132. There, a group of five individuals and one organization were the
14 “Proponents” of California’s Proposition 8, and that group of Proponents objected to discovery
15 requests on First Amendment grounds. *Id.* at 1132-33. The Ninth Circuit found that the
16 Proponents adequately demonstrated that they had First Amendment associational rights and there
17 was no indication by the Ninth Circuit that the individuals somehow lacked such rights because
18 they were not part of a formal organization. *Id.* at 1143-44. As *Perry* recognized, “[i]mplicit in
19 the right to associate with others to advance one's shared political beliefs is the right to exchange
20 ideas and formulate strategy and messages, and to do so in private.” *Id.* at 1142.

21 In briefing here, Haugen cites *Pebble Ltd. v. EPA*, 310 F.R.D. 575 (D. Alaska 2015) as
22 legal support for the argument that First Amendment associational rights are properly asserted by
23 individuals communicating even if not part of a formal association. [Dkt. 2061 at 9]. In *Pebble*,
24 the court applied the *Perry* standard in quashing subpoenas served on nonparties (two
25 conservation organizations and individuals associated with those organizations). The subpoenas
26 sought all communications between the subpoenaed parties and thirty-one other nonparties
27 regarding the EPA’s proceedings on a mining project opposed by the subpoenaed parties. The
28 *Pebble* court held:

[P]ublic participation before federal administrative agencies involves “the freedom to protest policies to which one is opposed, and the freedom to organize, raise money, and associate with other like-minded persons so as to effectively convey the message of the protest.” Both the District of Columbia District Court and the Ninth Circuit Court have recognized that discovery such as that sought by plaintiff in this case has the tendency to chill the free exercise of political speech and association which is protected by the First Amendment.

310 F.R.D. at 582 (cleaned up). After reviewing the declarations submitted and finding that the subpoenaed parties demonstrated a *prima facie* case of infringement on their First Amendment associational rights, the *Pebble* court found that the party seeking to enforce the subpoenas failed “to show that what it seeks goes to the heart of its claim and is carefully tailored to avoid unnecessary interference with protected activities.” *Id.* (citing *Beinin v. Ctr. for the Study of Popular Culture*, No. C 06-02298 JW, 2007 WL 1795693, at *3 (N.D. Cal. June 20, 2007)).

In its reply briefing, Meta does not discuss *Pebble* or attempt to effectively distinguish that case from the facts of this case. Nor does Meta discuss the cited *Beinin* opinion (relied on in *Pebble*) from this District, in which Judge Ware overruled objections to then-Magistrate Judge Seeborg’s order denying a motion to compel the disclosure of names and email addresses of individuals who sent emails to the plaintiff expressing support for his litigation. In *Beinin*, Judge Seeborg found that “the interests that underlie the associational privilege are fully implicated notwithstanding the fact that there is no formal organization per se.” 2007 WL 1795693, at *2 (emphasis added). In affirming Judge Seeborg’s ruling, Judge Ware recognized that:

Support of litigation is a form of expression and association protected by the First Amendment. Compelled disclosure of the names of individuals or groups supporting a plaintiff’s lawsuit thus creates a risk of interference with First Amendment-protected interests in two ways. First, compelled disclosure might make the plaintiff, or future plaintiffs, reluctant to accept the support of unpopular groups, so that evidence of their support cannot be used against the plaintiff at trial. Second, the supporters themselves may desire anonymity, and may withhold support if they fear their names will be disclosed.

Id. at *3 (emphasis added). The Court finds the reasoning of both *Beinin* and *Pebble* to be directly applicable to the current dispute.

Meta’s failure to distinguish these precedents, which directly undercut Meta’s assertion that First Amendment associational rights are limited to organized groups or “expressive

1 associations,” further diminishes Meta’s arguments on the current dispute. Moreover, Meta’s
2 assertion on this point is puzzling because several of the subpoena’s requests explicitly seek
3 Haugen’s communications with identified and named organizations involved in public affairs and
4 communications/media, *i.e.*, “expressive associations.” *See* Request No. 9 (seeking
5 communications with the CEO and Partner of Bryson Gillette, a public affairs, strategic
6 communications, and political campaigns firm); Request No. 11 (seeking communications with
7 Reset Tech, a lobbying firm, and “any lobbying firms concerning the user of Social Media
8 Platforms by, the safety of, or the sexual exploitation of persons under the age of 18”); Request
9 No. 14 (seeking communications with the Omidyar Network, the Luminate Group, the Democracy
10 Fund, Mr. Pierre Omidyar, and any “other non-profit or advocacy groups controlled by or
11 affiliated with Mr. Omidyar”); Request No. 17 (seeking communications with Common Sense
12 Media, McCourt Institute, Sustainable Media Center, Center for Humane Technology, Integrity
13 Institute, Council for Responsible Social Media, and individuals associated with each); Request
14 No. 19 (seeking documents and communications with Haugen’s nonprofit group, Beyond the
15 Screen). Based on Meta’s own arguments and logic, these requests (Request Nos. 9, 11, 14, 17,
16 and 19) are properly quashed under the First Amendment because they expressly seek Haugen’s
17 private, confidential communications with “expressive associations.” Indeed, Meta made clear in
18 briefing that it does not object to Haugen withholding from production in response to Request No.
19 19 “private, internal communications among a core group of BTS members or employees
20 concerning the formulation of strategy.” [Dkt. 2149 at 3].

21 With regard to the second prong of the *Brock* test, Haugen has established that “exposure
22 could incite threats, harassment, acts of retribution, or other adverse consequences that could
23 reasonably dissuade persons from affiliating with” her. *Dole*, 921 F.2d at 972. Meta’s own
24 actions in this litigation demonstrate the adverse consequences Haugen has identified which such
25 persons could face if exposed—while this case concerns whether Meta is liable under various legal
26 theories for the design of its services/platform, Meta has subpoenaed, moved to compel
27 enforcement of subpoenas, and deposed several publicly known individual nonparties who have
28 spoken out publicly or testified as to their views on Meta. Like Haugen, none of those individuals

1 are parties to this MDL. Meta’s liability in this MDL stems from Meta’s own actions, and
2 whether Meta is liable does not depend on ascertaining the sincerity or scope of the personal views
3 of those subpoenaed individuals (nor does Meta’s liability depend on whether Haugen is credible
4 as to her personal views).

5 In addition to the alleged risk of “blackballing” in the industry due to Meta’s influence and
6 reach (discussed in the Court’s previous Order on the First Amendment issues implicated here),
7 the costs of responding to a subpoena, preparing for and sitting for a deposition, and opposing a
8 motion to compel are not insignificant burdens for an individual. Haugen has averred that using
9 109 search terms (based on the subpoena) to locate potentially responsive documents resulted in a
10 total hit count of over fourteen thousand documents. *See* Dkt. 2061-1 at ¶ 7; Dkt. 2061-2 at ¶¶ 5-
11 6. Haugen’s counsel estimates that the review of those documents would take approximately 239
12 hours, billed at attorney rates ranging from \$300 to \$910 per hour. Dkt. 2061-2 at ¶ 10. At the
13 lowest billing rate, the estimated attorney fees would be \$71,700 for this review, not including
14 time spent using additional search terms or contacting third parties to provide notice of any
15 production (if required). *Id.* at ¶¶ 9, 11. This burden on Haugen, an individual working for a
16 nonprofit, is coupled with the time spent on collecting documents and conferring with her counsel
17 (as well as preparing declarations necessitated by this motion to compel). Beyond the economic
18 costs, the time and effort spent on responding to a subpoena and attending deposition, which
19 necessarily detracts from an individual nonparty’s vocation and regular activities of life, are also
20 burdens resulting from Meta’s seeking discovery by subpoenas. The Court takes this into account
21 in the context of the Ninth Circuit’s directives to provide nonparties with special consideration
22 when faced with discovery demands by subpoenas. As Haugen has attested and the Court finds,
23 Meta’s own pursuit of discovery from individual nonparties (including filing multiple discovery
24 motions in this MDL) constitute objective and articulable facts which would negatively impact the
25 willingness of other as-yet unidentified nonparties to associate with Haugen, should the Court
26 enforce the subpoena as requested by Meta here.

27 Further, with regard to the Request Nos. 6-7 and 10 (seeking Haugen’s documents and
28 communications relating to her testimony before governmental entities, her communications with

1 Congressional members or staff, and her communications with regulators and law enforcement),
2 the fact that these requests seek documents relating to Haugen’s direct communications with
3 politicians and their staff directly implicates her First Amendment rights. As noted in *Pebble*,
4 courts have “aptly recognized that public participation before federal administrative agencies
5 involves ‘the freedom to protest policies to which one is opposed, and the freedom to organize,
6 raise money, and associate with other like-minded persons so as to effectively convey the message
7 of the protest.’” 310 F.R.D. at 582 (citations omitted). At the hearing on this dispute, Meta
8 argued that the requests seeking documents and communications about Haugen’s preparations for
9 her testimony and communications with governmental entities could potentially reveal material for
10 impeachment. While Meta has access to all of Haugen’s public testimony, her nonpublic
11 communications and documents used to prepare for such testimony and meetings with government
12 entities so as to effectively convey her messages are protected by her associational rights and her
13 right to petition the government under the First Amendment. Because these requests have not
14 been narrowed by Meta, their scope (as sought to be enforced) plainly implicates Haugen’s First
15 Amendment rights to associate and to petition the government.

16 Based on the record presented, the Court finds that Haugen has made a *prima facie*
17 showing of infringement of her First Amendment associational rights and, as to Request Nos. 6-7
18 and 10, her right to petition the government. *Perry*, 591 F.3d at 1140. Further, the Court finds
19 that Haugen has satisfied the two-prong test in *Brock* as summarized in *Dole*—first, she has
20 demonstrated a causal link between the disclosure and the prospective harm to associational rights;
21 and second, she has demonstrated that exposure could incite harassment, acts of retribution, or
22 other adverse consequences that could reasonably dissuade persons from affiliating with her.
23 *Dole*, 921 F.2d at 972. As discussed herein, the Court finds that Haugen has demonstrated that
24 enforcement of the objected-to requests in the Meta subpoena will, at the very least, have a
25 negative impact and chilling effect on the associational rights at issue here as between Haugen and
26 current/former Meta employees, the staff and agents of Haugen’s nonprofit organization, other
27 nonprofits, advocacy groups, and social critics which advocate about Meta’s risks for minors. In
28 light of these findings, the burden shifts to Meta to demonstrate an interest in obtaining the

1 discovery sufficient to justify the deterrent effect on the free exercise of the constitutionally
2 protected right of free association. *Perry*, 591 F.3d at 1140.

3 With regard to the need or interest in obtaining these documents, at the hearing and in
4 briefing, Meta argued that the operative complaint in this action mentions Haugen multiple times,
5 that Haugen is therefore a “uniquely prominent witness in this litigation,” and that Meta needs this
6 discovery in order to seek material which could be used for impeachment and to attack her
7 credibility. Meta argues that the documents requests are “highly relevant to the claims and Meta’s
8 defenses in this MDL because responsive documents will evidence Ms. Haugen’s views on TMH
9 [teen mental health] issues, reveal information she has relied on in making claims about social
10 media, demonstrate her bias, and provide context for Ms. Haugen’s statements on which plaintiffs
11 rely in bringing their claims.” [Dkt. 2016 at 7].

12 In analyzing the First Amendment rights at stake here, the Ninth Circuit requires that
13 courts “balance the burdens imposed on individuals and associations against the significance of
14 the . . . interest in disclosure, to determine whether the ‘interest in disclosure . . . outweighs the
15 harm[.]’” *Perry*, 591 F.3d at 1140 (cleaned up). *Perry* provides further guidance on evaluating
16 this balance:

17 This balancing may take into account, for example, the importance of
18 the litigation; the centrality of the information sought to the issues in
19 the case; the existence of less intrusive means of obtaining the
20 information; and the substantiality of the First Amendment interests
21 at stake. Importantly, the party seeking the discovery must show that
22 the information sought is highly relevant to the claims or defenses in
the litigation—a more demanding standard of relevance than that
under Federal Rule of Civil Procedure 26(b)(1). The request must
also be carefully tailored to avoid unnecessary interference with
protected activities, and the information must be otherwise
unavailable.

23 *Id.* at 1140-41 (cleaned up).

24 In *Beinin*, Judge Ware held that the party seeking the discovery must meet the “compelling
25 interest” standard as follows:

26 The First Amendment privacy interest is overridden only when the
27 party seeking the information asserts a compelling interest. A
“compelling interest” is one that “is crucial to the party’s case,” goes
to the “heart of the claims,” or is “directly relevant to the [party’s]
28 claim.” This is because the First Amendment occupies a “preferred

1 position . . . in the pantheon of freedoms,” and its interests are not
2 easily overridden.

2007 WL 1795693, at *3 (citations omitted).

3 Here, Meta has not shown that the interest in disclosure outweighs the burdens imposed on
4 Haugen. First, while the Court assumes for purposes of this First Amendment analysis that the
5 documents sought have some relevance to the case, the documents sought are not central to the
6 issues in the case. Whether Meta is liable requires analyzing its services and behavior, not
7 deciding whether Haugen’s views are truthful. At oral argument, counsel for the Plaintiffs made
8 clear they will not rely on Haugen as an expert witness. In the negotiations prior to the filing of
9 letter briefing on this dispute, Plaintiffs’ counsel even offered to withdraw or remove Haugen as a
10 fact witness “to help prevent Meta’s retaliation against her.” [Dkt. 2061 at 9]. Meta, however,
11 “refused.” *Id.* As a non-expert witness, and third party to this case, Haugen’s personal views or
12 opinions (and their bases) are not crucial to this case, do not go to the heart of the claims, and are
13 not directly relevant to either Plaintiffs’ claims or Meta’s claims. Meta’s assertion that Haugen
14 has a “heightened role in this litigation” is not borne out by the record presented. Rather, the
15 primary reason she has a role in this litigation now is because Meta has kept her involved in the
16 case. While Meta makes much of the fact that Haugen is mentioned multiple times in the
17 operative complaint (second most after Mark Zuckerberg), Haugen points out that she is
18 mentioned in less than ten of the over one thousand paragraphs of the pleading. A desire to obtain
19 information to potentially impeach Haugen is not highly relevant or even central to the issues in
20 this case, particularly where Plaintiffs’ counsel offered not to call Haugen as a witness. *Perry*, 591
21 F.3d at 1140 (setting heightened relevance standard if *prima facie* case is established). As
22 Plaintiffs have conceded, the case could proceed fully without Haugen testifying at trial—thus
23 demonstrating the fundamental lack of centrality or criticality of the discovery sought. If
24 Haugen’s testimony is not central to this case, then documents sought to impeach her are similarly
25 not central or critical to this case.

26 Further, as Haugen’s former employer, Meta has in its possession or control all
27 communications that Haugen had with other Meta employees (including former Meta employees)
28 during her employment, to the extent she and those other Meta employees used Meta’s email,

1 direct messaging, voicemail, fax, and other communication equipment and services. Meta also has
2 possession and control of Haugen's work files, which would include documents and
3 communications sought by these requests. Similarly, Meta has possession or control over any
4 communications that current and former Meta employees have had with Haugen after she left
5 Meta's employ, to the extent those Meta employees used Meta's email or other communication
6 systems. Meta clearly knows about and has Haugen's interviews, public documents, testimony,
7 and publication about Meta. Additionally, Meta has apparently deposed several former Meta
8 employees who have had communications with Haugen.

9 Given all of these other sources of information and documents from or concerning Haugen
10 available to Meta, and particularly in light of the fact that Meta has been able to identify at least
11 some former Meta employees who have had communications with Haugen and has taken
12 discovery from those persons, the Court finds that there exist less intrusive means of obtaining the
13 information sought. At least as to current and former Meta employees, some of the information
14 sought is not otherwise unavailable. The need for these documents is thus diminished by the fact
15 that Meta has access to multiple other sources of information which can be used to probe
16 Haugen's views. Clearly, Meta has ample information and documents disclosing Haugen's views
17 about Meta, and as discussed below, Meta is free to probe Haugen's expressed views at
18 deposition. The documents sought by these specific requests are thus of diminished importance in
19 light of these other sources of discovery produced and available in this case, and are accordingly
20 not proportional to the needs of the case.

21 The Court finds that the documents sought do not meet the more demanding standard of
22 relevance applicable here under *Perry*. To the extent that Meta justifies these requests on the
23 grounds that they may result in the production of documents which may go to credibility issues,
24 the Court finds that a mere desire for potentially impeaching documents does not alone meet the
25 more exacting relevance standard in the First Amendment context. The desire for material for
26 impeachment of a nonparty (who is not an expert witness and was proposed to be withdrawn as a
27 trial witness by Plaintiffs' counsel) is not proportional to the needs of the case under Rule 26,
28 particularly where it is an open question whether she would even be called to testify at trial by

1 anyone.

2 As a fallback argument, Meta asserts that quashing the requests entirely is not justified
3 because it is incumbent on Haugen to perform a “document-specific analysis” of the extent of the
4 applicability of the privilege under *Perry*. [Dkt. 2149 at 3]. That is, Meta argues that Haugen
5 bears the burden of reviewing every single possibly responsive document and then performing a
6 document-by-document review to identify whether a particular document constitutes a “private,
7 internal communication” which discusses “formulation of strategy.” *Id.* Nothing in *Perry*
8 mandates this procedure, which would impose all of the burdens of responding to discovery which
9 the Ninth Circuit has mandated that district courts should especially take into consideration when
10 third parties are involved. That is, the reason a whole subpoena (or a whole request) may be
11 quashed under Rule 45 is to relieve a nonparty of that kind of burden when balanced against
12 relevance.

13 Further, this argument presupposes that Meta is interested in nonprivileged
14 communications on topics outside of “formulation of strategy” or the substance of Haugen’s
15 expressed views about Meta. At oral argument, the Court asked Meta’s counsel if Meta was truly
16 interested in obtaining emails between Haugen and third parties (such as congressional staff)
17 regarding nonprivileged topics such as scheduling of meetings, and Meta’s counsel common
18 sensically admitted that such communications are not of any interest (precisely because they are
19 not substantive, because they are outside the scope of the privilege). As the party seeking to
20 enforce the subpoena at this stage, it is incumbent on Meta, before documents have been produced,
21 to identify those subcategories of nonprivileged documents responsive to the requests which are
22 relevant and of any interest to the Parties in this case. Meta has not done so, for the obvious
23 reason that the very documents Meta seeks are those nonpublic, confidential documents and
24 substantive communications between Haugen and third parties which discuss “formulation of
25 strategy” and otherwise relate to the expressing of views protected by the First Amendment. As a
26 result, Meta has not identified for the Court any basis to enforce the subpoena to require Haugen to
27 search for and produce responsive documents and communications which fall outside the scope of
28 the privilege (because Meta has no interest in such nonprivileged and likely non-substantive

1 documents).

2 Taking into consideration all factors presented by the Parties, the Court therefore finds that
3 the balance of harms to the First Amendment associational rights here are not outweighed by the
4 interest in disclosure of communications with current or unidentified former Meta employees, with
5 the staff and agents of Haugen’s nonprofit organization, with other nonprofits, with advocacy
6 groups, and with social critics which advocate about Meta’s risks for minors. Accordingly, except
7 as to the nonprivileged emails responsive to Request Nos. 6-7 discussed above, the Court finds
8 that Request Nos. 1-3, 6-17, and 19 do not meet the Ninth Circuit’s standards for enforcement in
9 light of Haugen’s First Amendment objections and are appropriately quashed to the extent they
10 seek documents protected by Haugen’s First Amendment associational rights and her right to
11 petition the government.

12 **II. FIRST AMENDMENT: JOURNALIST’S PRIVILEGE.**

13 Haugen objects to Request Nos. 2-3, 8-14, and 16-19 to the extent that they seek
14 documents protected from discovery by the journalist’s privilege under the First Amendment.
15 Request No. 18 is the most relevant request at issue, because it seeks all documents and
16 communications “related to the research, development, and publication of” Haugen’s recently
17 published book “insofar as the Documents and Communications also relate to the use of Social
18 Media Platforms by, the safety of, or the sexual exploitation of persons under the age of 18.” See
19 Appendix. As noted above, Haugen authored a book published in 2023 titled, “The Power of One:
20 How I Found the Strength to Tell the Truth and Why I Blew the Whistle on Facebook,” and thus,
21 she asserts she is entitled to invoke the journalist’s privilege. [Dkt. 2136 at 3]. In support of her
22 objection, Haugen cites *Shoen v. Shoen*, 5 F.3d 1289 (9th Cir. 1993). In response, Meta argues
23 that the journalist’s privilege does not apply to the author of a memoir because such an author is
24 not acting as a journalist under *Shoen*. [Dkt. 2135 at 3].

25 In *Shoen*, the Ninth Circuit explained the scope of the journalist’s privilege as follows:

26 [W]hen facts acquired by a journalist in the course of gathering the
27 news become the target of discovery, a qualified privilege against
28 compelled disclosure comes into play. . . . [W]e interpreted *Branzburg
v. Hayes*, 408 U.S. 665, 92 S.Ct. 2646, 33 L.Ed.2d 626 (1972), as
establishing such a qualified privilege for journalists. . . . Rooted in

the First Amendment, the privilege is a recognition that society's interest in protecting the integrity of the newsgathering process, and in ensuring the free flow of information to the public, is an interest "of sufficient social importance to justify some incidental sacrifice of sources of facts needed in the administration of justice." We held in *Farr* that the journalist's privilege recognized in *Branzburg* was a "partial First Amendment shield" that protects journalists against compelled disclosure in all judicial proceedings, civil and criminal alike.

5 F.3d at 1292 (citations omitted).

It is well-settled that, under *Shoen*, book authors are entitled to invoke the journalist's privilege:

The journalist's privilege is designed to protect investigative reporting, regardless of the medium used to report the news to the public. Investigative book authors, like more conventional reporters, have historically played a vital role in bringing to light "newsworthy" facts on topical and controversial matters of great public importance. At the turn of the century, for example, muckraking authors such as Lincoln Steffens and Upton Sinclair exposed widespread corruption and abuse in American life. More recently, social critics such as Rachel Carson, Ralph Nader, Jessica Mitford, and others have written books that have made significant contributions to the public discourse on major issues confronting the American people. Indeed, it would be unthinkable to have a rule that an investigative journalist, such as Bob Woodward, would be protected by the privilege in his capacity as a newspaper reporter writing about Watergate, but not as the author of a book on the same topic.

In sum, we see no principled basis for denying the protection of the journalist's privilege to investigative book authors while granting it to more traditional print and broadcast journalists. What makes journalism journalism is not its format but its content.

Id. at 1293 (footnotes omitted).

Meta's argument that the journalist's privilege is inapplicable because Haugen's book is a "memoir" is not supported by controlling law and appears to be based on a misreading of *Shoen*. *Shoen* held that the qualified privilege protects against compelled disclosure of "facts acquired by a journalist in the course of gathering the news" and "protect[s] the integrity of the newsgathering process," even if there is "some incidental sacrifice of sources of facts needed in the administration of justice." *Id.* at 1292. The determination as to whether the privilege applies thus turns on whether the party seeking compelled disclosure seeks facts acquired by the author in the course of gathering the news written about in the book, include the sources of such facts. The

1 Ninth Circuit's lengthy discussion as to the applicability of the privilege to book authors stresses
2 that the touchstone of the inquiry is not the form of the media at issue (*i.e.*, newsprint or television
3 news versus book), but rather the content. *Id.* at 1293. Thus, Meta's labelling Haugen's book a
4 "memoir" is beside the point, because it is an attempt to elevate form over substance.

5 Here, while parts of Haugen's book discuss her youth and upbringing or her career both
6 before and after working for Meta, those are not the sections of the book for which Meta is
7 seeking discovery. As noted, Request No. 18 seeks all documents and communications relating to
8 Haugen's book to the extent that they "relate to the use of Social Media Platforms by, the safety
9 of, or the sexual exploitation of persons under the age of 18." It is thus clear that Meta is seeking
10 disclosure of Haugen's sources, facts gathered, and her process for gathering the facts which
11 culminated in her writing the portions of her book discussing what she observed at Meta and her
12 views about Meta and teen mental health issues. Under *Shoen*, the journalist's privilege protects
13 against compelled disclosure of such materials.

14 In *Shoen*, the Ninth Circuit stressed that the journalist's privilege "is qualified, not
15 absolute," stating that "the process of deciding whether the privilege is overcome requires that 'the
16 claimed First Amendment privilege and the opposing need for disclosure be judicially weighed in
17 light of the surrounding facts, and a balance struck to determine where lies the paramount
18 interest.'" 5 F.3d at 1292-93 (citations omitted). As discussed above, Meta's asserted need for
19 this discovery is based on a desire to seek materials which might be used to impeach Haugen
20 (should she testify at trial) and to attack her credibility. Again, it bears repeating that Haugen is
21 not a party to this litigation, she is not an expert witness, and it was even proposed by Plaintiffs'
22 counsel that she be withdrawn as a fact witness. Haugen may never testify at trial. Her third-party
23 opinions are those of a layperson, and there has been no determination as to whether she would
24 even be allowed to testify as to opinions even if she were to testify at trial (and if so, to what
25 extent any such opinions would be admissible). Seeking compelled disclosure of material to
26 potentially impeach a nonparty fact witness (particularly where Meta has other sources of
27 information and materials about Haugen, as discussed above) does not outweigh the qualified First
28 Amendment journalist's privilege on this record.

1 Accordingly, the Court finds that, under the applicable legal standards, Request No. 18 is
2 properly quashed in its entirety. The Court further finds that Request Nos. 2-3, 8-14, and 16-17,
3 and 19 are properly quashed to the extent seeking documents protected from discovery under the
4 journalist's privilege.

5 **III. RELEVANCE AND LACK OF PROPORTIONALITY OBJECTIONS.**

6 Haugen also objects that Request Nos. 1-3 and 6-19 are overbroad, irrelevant, and/or
7 disproportionate to the needs of the case. [Dkt. 2061 at 5 (objecting to Request Nos. 2-3 and 6-19
8 as overbroad, outside the scope of relevant discovery, and unduly burdensome); Dkt. 2136 at 3
9 (objecting to Request Nos. 1 and 13 as irrelevant, and Request Nos. 3 and 15-16 as irrelevant and
10 disproportionate to the needs of the case)]. As discussed above, Meta argues that these requests
11 seek relevant documents because of Haugen's asserted importance to the case and because of
12 Meta's need to find material to impeach Haugen.

13 As drafted, a number of the requests seek documents which are of limited relevance to this
14 case. Request Nos. 6-7 and 10 seek all communications and documents relating to Haugen's
15 testimony before governmental bodies, state regulators, and communications with congressional
16 members and their staff. *See Appendix.* As discussed above, at oral argument, counsel for Meta
17 conceded that, despite the breadth of the requests, Meta is not interested in receiving non-
18 substantive documents and communications on issues such as scheduling of meetings. Meta's
19 asserted need for these materials to potentially impeach Haugen ignores whether impeaching
20 Haugen on her personal views about Meta is within the scope of relevance for discovery. Juries in
21 this MDL are never going to have to decide whether Haugen's testimony before Congress or
22 communications with regulators/law enforcement was truthful or had a reasonable basis—this is
23 not a perjury case against Haugen.

24 Similarly, Request Nos. 8-9 and 12-13 seek all communications and documents relating to
25 Haugen's interview on *60 Minutes*, her communications with CBS, the Wall Street Journal, or
26 other reporters, and the publication of "The Facebook Files" by the Wall Street Journal. *See*
27 *Appendix.* Again, a jury is never going to be tasked with deciding whether Haugen's views as
28 stated to the press were truthful or had a reasonable basis—this is not a defamation case. Indeed,

1 at oral argument, counsel for Meta conceded that documents relating to “publication” of “The
2 Facebook Files” could be “set aside” as irrelevant.

3 Request No. 15 seeks documents relating to payments or reimbursements to Haugen for
4 her appearances or statements. Haugen is not an expert witness in this MDL. The issue of any
5 payments or reimbursements for expenses to Haugen is far afield from the liability issues in this
6 litigation. There is no cause of action in this case which depends on making any findings as to
7 Haugen’s receipt of money.

8 Request No. 18 seeks documents and communications relating to Haugen’s book, and
9 Request No. 19 seeks documents on the development of her nonprofit. The research, bases, and
10 materials used in the drafting of her book or the development of her nonprofit are similarly far
11 afield from the issues disputed in this MDL. Indeed, Request No. 18 seeks documents on “the
12 publication” of Haugen’s book and, as Meta’s counsel conceded in the context of Request No. 13,
13 documents on the publication of a book are properly set aside in this case.

14 Accordingly, the Court finds that Request Nos. 6-10, 12-13, 15-16, and 18-19, as sought to
15 be enforced, seek material that is outside the scope of relevance for purposes of discovery. Meta
16 has not sought to significantly narrow or focus these requests to any identifiable subgroup of
17 potentially relevant documents, and thus, there is no basis in the record to enforce these requests
18 partially. The Court therefore sustains Haugen’s relevance objections to these requests and, for
19 this separate reason, quashes them as presented.

20 Further, Haugen’s proportionality objections to the requests stress the thirteen-year time
21 frame covered by Meta’s requests (compared to the two years Haugen spent working at Meta) and
22 the burden of searching through over a decade’s worth of documents. Under Rule 26’s traditional
23 standard for proportionality of discovery, Meta has not shown that the discovery requests at issue
24 are proportional to the needs of the case. As discussed above, Plaintiffs’ counsel offered to
25 withdraw Haugen as a fact witness for trial, and disclaimed relying on her as an expert witness.
26 There is thus a realistic probability that Haugen may never testify at trial. If she does not testify at
27 trial, then material for impeachment is unnecessary and certainly not proportional to the needs of
28 the case. Even if she did testify at trial, it would appear to be an unusual case in which sixteen

1 different document requests seeking material for impeachment of a nonparty lay witness would all
2 be proportional to the needs of a case.

3 Haugen has averred that the hit count using 109 search terms (based on the subpoena) to
4 locate potentially responsive documents resulted in a total of over fourteen thousand documents.
5 See Dkt. 2061-1 at ¶ 7; Dkt. 2061-2 at ¶¶ 5-6. Haugen's counsel estimates that the review of those
6 documents would take approximately 239 hours, billed at attorney rates ranging from \$300 to
7 \$910 per hour. [Dkt. 2061-2 at ¶ 10]. At the lowest billing rate, the lowest amount of estimated
8 attorney fees would thus be \$71,700 for this review and search, not including time spent using
9 additional search terms or contacting third parties to provide notice of any production (if required).
10 *Id.* at ¶¶ 9, 11. This burden on Haugen, an individual working for a nonprofit, is to be balanced
11 against Meta's asserted need for the documents. As noted above, Meta's position is that these
12 requests are proper because they may reveal information which could be used to impeach Haugen.
13 And as noted, Haugen is not an expert witness, she was proposed to be taken off the trial witness
14 list by Plaintiffs, and she may never testify at trial. Meta does not contend that any of the
15 documents sought are necessary for (much less related to) any affirmative defenses, or that they
16 are central to rebutting liability. The potential for impeachment here is not shown to sufficiently
17 outweigh the burden of response to the subpoena.

18 Haugen has sufficiently demonstrated that Request Nos. 1-4 and 6-19, as drafted and
19 sought to be enforced, are not proportional to the needs of the case in light of Haugen's resources,
20 the lack of importance of the discovery in resolving the issues disputed in this MDL, and the
21 burden or expense of the proposed discovery which outweighs its likely benefit. Again, Meta has
22 not sought to significantly narrow or focus these requests on any identifiable subgroup of
23 documents to reduce the burden of review and collection, and thus, there is no basis in the record
24 to enforce these requests partially. The Court therefore sustains Haugen's lack of proportionality
25 objections to these requests and, for this separate reason, quashes them as presented.

26 **IV. DEPOSITION SUBPOENA.**

27 In addition to the document subpoena, the Parties present a dispute relating to the
28 deposition subpoena served on Haugen. Haugen objects not to the deposition subpoena itself—

1 she has agreed to sit for deposition noticed by Meta. [Dkt. 2061 at 4]. Rather, Haugen seeks a
2 preemptive ruling on her objections that the anticipated scope of questions Meta might ask would
3 infringe her First Amendment rights and further seeks a ruling limiting the deposition to certain
4 identified topics. *Id.* at 5. Meta argues that Haugen's deposition should not be limited to certain
5 topics and that her request is premature. *Id.* at 6-7.

6 As the Court noted at the hearing on this matter, Haugen's request is procedurally
7 improper. First, she is being deposed in her capacity as an individual and there is no requirement
8 under the Federal Rules of Civil Procedure for a party taking a deposition of a natural person
9 under Rule 30(b)(1) to list out and limit their questioning to certain previewed topics as if this
10 were a Rule 30(b)(6) deposition of an organization or entity. Second, whether Haugen has a
11 legitimate objection to a deposition question on the basis of First Amendment or other privilege is
12 highly fact-specific and dependent on the phrasing of the deposition question. It is premature to
13 ask for a ruling on privilege objections to questions which have not yet been asked. *See Clarke v.*
14 *Am. Commerce Nat'l Bank*, 974 F.2d 127, 129 (9th Cir. 1992) ("[W]e have noted that blanket
15 assertions of the privilege are 'extremely disfavored.' The privilege must ordinarily be raised as to
16 each record sought to allow the court to rule with specificity.") (internal citation omitted);
17 *E.E.O.C. v. Kaplan Higher Educ. Corp.*, No. 1:10 CV 2882, 2011 WL 2115878, at *3 (N.D. Ohio
18 May 27, 2011) ("The Court finds that ruling on any assertions of privilege prior to a deposition
19 would be premature[.]"). If the Court was to provide an advisory opinion as to specific privilege
20 objections in a vacuum, that risks the potential for inviting further mischief in the form of more
21 arguments over interpretation and scope (likely impeding the timely completion of the deposition).
22 The normal procedure is for the deposition to go forward and for questions to be asked, subject to
23 any properly asserted privilege objection specific to a question asked, to allow for specificity in
24 the record should there be a need for further judicial intervention. *See O'Toole v. City of Antioch*,
25 No. 11-cv-01502-PJH (MEJ), 2015 WL 1848134, at *3 (N.D. Cal. April 14, 2015) (denying
26 request to quash deposition subpoena entirely and stating that "[a] party claiming the privilege
27 must identify specific communications and the grounds supporting the privilege as to each piece
28 of evidence over which privilege is asserted").

1 At oral argument, the Court admonished counsel for Meta not to waste time attempting to
2 elicit unnecessarily numerous privilege or First Amendment objections or instructions not to
3 answer. Attempting to intrude into a privilege by asking unduly repeated, objectionable questions
4 or by probing aggressively into the extent of a privilege assertion in an attempt to either obtain a
5 basis for arguing waiver if a question is answered or to create more discovery disputes is not a
6 productive use of the Parties' time, the witness's, time, or counsel's time. Wise and experienced
7 counsel will take into account this Court's rulings in this Order and directives throughout this
8 MDL in crafting questions and making productive use of the time spent at deposition.

9 At oral argument, the Court also admonished counsel for Haugen not to waste time by
10 objecting and instructing not to answer questions on the basis of an unjustified and unreasonable
11 assertion of privilege as to any specific questions. For example, as the Court has ruled in the
12 previous Order, because Meta is already aware of the identity of several people who have had
13 communications with Haugen (and has apparently deposed a number of them already), the
14 assertion of First Amendment or other privilege solely as to those persons' identities would appear
15 to be unjustified and moot. *See* Dkt. 1963 at 15. To the extent other third parties have already
16 produced documents or testified as to the substance of their communications with Haugen, the
17 assertion of First Amendment or other privilege as to those already-disclosed communications
18 would also appear to lack a reasonable basis. Wise and experienced counsel will take into account
19 not only this Court's rulings (herein and throughout this MDL), but also the record of discovery
20 and disclosure in this case, in defending Haugen's deposition to make sure the deposition is
21 completed timely and with a minimum of disruptions. Counsel are reminded of their obligations
22 under Rule 30(c)(2) ("[T]estimony is taken subject to any objection. An objection must be stated
23 concisely in a nonargumentative and nonsuggestive manner. A person may instruct a deponent
24 not to answer only when necessary to preserve a privilege, to enforce a limitation ordered by the
25 court, or to present a motion under Rule 30(d)(3).").

26 The Court finds that this dispute is premature. The fact that the Court is denying without
27 prejudice Haugen's motion with regard to her deposition is self-evidently not a decision on the
28 merits of the propriety (or lack thereof) of any privilege objection which may be made at Haugen's

1 deposition. Because Haugen's motion is premature, any argument that this Order constitutes an
2 express or implicit overruling of any specific privilege objections would be unfounded. *Kaplan*,
3 2011 WL 2115878, at *3.

4 Further, the undersigned reminds counsel of their obligations under Section D of the
5 Discovery Standing Order regarding depositions. The undersigned is cognizant that the Parties
6 have a need to complete this deposition in short order, to the extent the deposition transcript may
7 be used in any expert reports. The undersigned trusts counsel to cooperate as required in the
8 scheduling of both the completion of Haugen's document production and the scheduling and
9 logistics for her deposition

10 CONCLUSION

11 Pursuant to and for all the reasons discussed herein, the Court **GRANTS** Haugen's motion
12 to quash Request Nos. 1-3 and 8-19, and **GRANTS** Haugen's motion to quash-in-part Request
13 Nos. 6 and 7.

14 In light of this Order and the representations that Haugen has already produced documents
15 and agreed to do so in response to certain requests, the Court estimates that Haugen's document
16 production is either already completed or can be completed promptly. Accordingly, the Court
17 **ORDERS** Haugen to complete her document production in response to the document subpoena
18 (as modified/quashed by this Order) by no later than September 5, 2025. Nothing in this Order
19 precludes the Parties from reaching agreement on extending that deadline.

20 Further, because Haugen has agreed to search for and produce nonprivileged documents
21 responsive to Request Nos. 5, 6, 7, 22 and 23, it is possible that Haugen will find and then
22 withhold privileged documents responsive to those requests. Accordingly, the Court **ORDERS**
23 Haugen (as the person asserting the privilege) to serve a categorical privilege log on Meta for any
24 such documents responsive to these requests by no later than September 5, 2025. Nothing in this
25 Order precludes the Parties from reaching agreement on extending that deadline. The Court is
26 requiring a categorical privilege log because of the consideration to be given with regard to burden
27 on Haugen as a nonparty, and out of consideration for the shortness of time (because fact
28 discovery closed long ago). A categorical privilege log will allow the Parties to determine

1 whether there is even a dispute as to the assertion of privilege as to any such withheld documents,
2 particularly in light of this Order. *See Doe v. Kaiser Found. Health Plan, Inc.*, No. 23-cv-02865-
3 EMC (PHK), 2024 WL 3511627, at *4 (N.D. Cal. July 23, 2024); *Facebook Consumer Privacy*
4 *User Profile Litig.*, 2022 WL 18863582, at *1 (Discovery Special Master Order resolving disputes
5 as to certain specific documents identified from categorical privilege logs).

6 The Court further **DENIES WITHOUT PREJUDICE** Haugen's request for a ruling,
7 prior to her deposition, on privilege objections and **DENIES** Haugen's request to limit her Rule
8 30(b)(1) deposition to only certain identified topics as if it were a Rule 30(b)(6) deposition.

9 The Court further **ORDERS** counsel for the Parties (including Haugen) to meet and confer
10 promptly to finalize and reach agreement on the logistics and schedule for her deposition. That
11 meet and confer process **SHALL** be completed by August 26, 2025 and Haugen's deposition
12 **SHALL** be taken and completed by no later than September 15, 2025. Nothing in this Order
13 precludes the Parties from reaching agreement to extend these deadlines.

14 Counsel for Meta and Haugen **SHALL** file a joint status report on September 8, 2025,
15 reporting on the status of Haugen's completion of her document production, the service of her
16 categorical privilege log, and the final scheduling of her deposition. The Parties are expected to
17 exercise diligence and professional coordination/courtesy in completing this discovery relating to
18 Haugen.

19 This **RESOLVES** Dkt. 2061.

20
21 **IT IS SO ORDERED.**

22 Date: August 19, 2025

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PETER H. KANG
United States Magistrate Judge

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